IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7128 OF 2004

Sanjay Vasudeo Gokhale .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents.

Mr.R.K.Mendadkar for petitioner
Mr.Sudhir Talsania i/b. Sanjay Udeshi & Co. for respondent No.3
Mr.R.D.Rane, Addl.G.P. for respondent Nos. 1 and 2.

CORAM : A.P.SHAH AND S.C.DHARMADHIKARI, JJ.
DATE : 23rd NOVEMBER 2004.

P.C.

1. This petition under Article 226 of Constitution of India prays for a writ of mandamus directing respondent No.3 to withdraw and/or cancel the show cause notice dated 16th August 2004 (Exh.A) by which petitioner has been called upon to show cause as to why punishment proposed therein should not be imposed upon him.

2. The petition proceeds on the basis that punishment is proposed only because the petitioner has been unable to obtain caste validity certificate from the Scrutiny Committee as demanded by respondent No.3. However, the events disclosed hereinafter would demonstrate that petition is wholly misconceived.

3. It is the case of petitioner that he was granted caste certificate by Executive Magistrate, Nagpur on 21st June 1990 certifying him as belonging to "Halba" Scheduled Tribe.

4. In pursuance of an advertisement issued by respondent No.3 inviting applications for the post of clerk cum cashier under reserved category of scheduled tribe, petitioner applied and was duly selected and appointed with effect from 23rd October 1997 by respondent No.3. The appointment was to the post of clerk cum cashier. It is the case of petitioner that he was called sometime in August 2002 to submit 18 (eighteen) documents for verification of his caste certificate by the Scrutiny Committee appointed for that purpose. It is his case that he forwarded these documents

as called upon by respondent No.3 for onward transmission to respondent No.2 committee. It is his case that he also applied for dropping the proceedings for verification of his caste claim. He pointed out that the appointment having been made as early as in October 1997, respondent No.3 - employer at a belated stage, cannot call upon him to have his caste claim verified and scrutinised by the Committee. Reliance was placed by the petitioner on some rulings of this Court.

5. It is his case that instead of considering this representation favourably, respondent No.3 issued show cause notice and called upon the petitioner to once again forward documents. Petitioner in reply to the show cause notice pointed out that he has submitted the requisite documents and nothing more remains to be forwarded or supplied at his end. Petitioner by his letters dated 9th June 2003 and 21st June 2003 once again reminded respondent No.3 that the documents having been forwarded nothing remains to be done by him.

6. Petitioner apprehending punitive action by respondent No.3 on account of non scrutiny/ non verification of caste claim instituted W.P. No.559 of 2004 in this court. The said petition came to be withdrawn on 5th April 2004.

7. Prior to withdrawal of this petition, respondent No.3 served a charge sheet on the petitioner in which it was alleged that petitioner is guilty of insubordination, disobedience of lawful orders of the superiors which is misconduct under the service rules. Petitioner filed a reply to this charge sheet denying all the allegations. It is his case that he has forwarded all documents that are in his possession, which would enable the respondent No.2 Committee to verify and scrutinise his caste claim. He contended that respondent No.2 could have proceeded on the basis of these documents. He contended that respondent No.3 could not have called upon petitioner to furnish documents nor could it allege misconduct only because the same were allegedly not supplied by him. Petitioner, therefore, requeseted that the enquiry be dropped.

8. It appears that petitioner filed W.P. 5571 of 2004 in this Court seeking direction to respondent No.2 Committee to decide his caste claim forthwith. On the own showing of petitioner, this petition was dismissed on 15th July 2004.

9. Present petition has been instituted on receipt of show cause notice/ memorandum (Exh.A) proposing punishment of dismissal from service.

10. We have heard Mr.Mendadkar, learned Counsel appearing for petitioner, Mr.Rane, learned A.G.P. for respondent Nos. 1 and 2 and Mr.Talsania, learned Counsel for respondent No.3. Mr.Talsania handed over to us a compilation of documents. In his submission right from November 1997, respondent No.3 has been calling upon the petitioner to have his caste claim verified in accordance with law. Mr.Talsania submits that a perusal of these documents in this compilation would reveal that petitioner was avoiding scrutiny and verification of his caste claim. He submits that such scrutiny being mandatory in

law, petitioner was called upon to submit the documents for onward transmission to the scrutiny committee. Mr.Talsania invites our attention to the correspondence on this issue with the petitioner as well as respondent No.2 Committee. Mr.Talsania submits that despite being called upon repeatedly to submit the necessary documents, petitioner did not forward the same and evaded the issue. This act of petitioner has been viewed seriously and, therefore, the punishment was proposed.

11. Mr.Talsania, invites our attention to the charge sheet as also the enquiry report. He submits that petition neither challenges the charge sheet nor the Enquiry proceedings. He submits that petitioner has also not challenged the findings in the Enquiry Report. He submits that the petition proceeds on the basis that no punishment is imposed. However, he invites our attention to the letter of termination which has been issued. Mr.Talsania, submits that the petition does not seek any direction nor contains prayers insofar as enquiry proceedings are concerned. Petitioner having withdrawn earlier

petition seeking directions to respondent No.2 committee, the present petition is barred by *res judicata* and even otherwise is thoroughly misconceived.

12. Mr.Mendadkar could not dispute the contents of the documents in the compilation forwarded by respondent No.3. He submits that the scrutiny committee could have proceeded with the verification and scrutiny of the caste claim on the basis of available material. He submits that petitioner would take the consequence and risk of documents not being fowarded to the Committee. However, that cannot be viewed as an act of misconduct and on that basis neither any enquiry could be initiated nor penalty/ punishment imposed.

13. We find that the petition is thoroughly misconceived. Petitioner has without questioning the charge sheet as well as enquiry report proceeded to challenge the show cause notice/ memorandum on the proposed punishment. Petitioner is confusing the issue of submission of documents as called upon by respondent No.3

and the jurisdiction and power of the scrutiny committee. In our view, petitioner cannot assail the enquiry against him. The enquiry is for misconduct. Petitioner has been held guilty of insubordination and disobedience of lawful orders of the superiors. For that purpose he has already been visited with penalty of termination from service. He cannot succeed in this petition by praying that the scrutiny committee is siezed of the matter and till the decision of the scrutiny committee, respondent No.3 cannot take any action against him. As stated above, the verification and scrutiny of caste claim by respondent No.2 is independent of the power to initiate disciplinary proceedings vested in respondent No.3. It is true that the action has also been initiated on account of non furnishing and non supply of documents for onward transmission to respondent No.2 Committee. However, by that alone, we cannot proceed to hold that the enquiry was either vitiated or uncalled for. More so, when neither the enquiry report nor the charge sheet preceding enquiry is subject matter of challenge. This petition is thoroughly misconceived and no relief can be granted in

favour of petitioner. There is no question of interfering or interdicting with the enquiry proceedings when petitioner is no longer in service.

14. At this stage, Mr.Mendadkar prays that the ad-interim order passed by this Court protecting the service of petitioner be continued till the scrutiny committee decides the caste claim and for a period of two weeks if its decision is adverse to petitioner. Having concluded that the petition is thoroughly misconceived we cannot continue the ad-interim order. More so, when the termination has already been effected. All that can be done is to direct the scrutiny committee to expedite the scrutiny and verification of the caste claim of the petitioner. If the scrutiny committee validates the caste claim, it will be open for petitioner to apply to respondent No.3 for re-instatement in service. Mr.Talsania makes a statement before us that in case petitioner succeeds in proving his caste claim, then respondent No.3 would favourably consider his request for reinstatement in service without payment of any backwages.

15. We are of the view that the statement of Mr.Talsania sufficiently protects petitioner. No other directions are, therefore, necessary.

16. Petition is disposed off accordingly.

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